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SENATE BILL 1

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

RELATING TO LOCAL GOVERNMENTS; ENACTING THE CONVENTION CENTER FINANCING ACT; AUTHORIZING CERTAIN LOCAL GOVERNMENTAL ENTITIES TO IMPOSE A DAILY FEE ON THE USE OF LODGING FACILITIES; AUTHORIZING QUALIFIED MUNICIPALITIES TO ISSUE BONDS; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Convention Center Financing Act".

Section 2. DEFINITIONS.--As used in the Convention Center Financing Act:

A. "additional municipality" means an incorporated municipality, not a qualified municipality, that is authorized to impose convention center fees pursuant to the Convention Center Financing Act;

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1 B. "convention center fee" means the fee imposed by
2 a local government entity pursuant the Convention Center
3 Financing Act on vendees for the use of lodging facilities;

4 C. "local governmental entity" means a qualified
5 municipality, a county or an additional municipality authorized
6 by the Convention Center Financing Act to impose convention
7 center fees;

8 D. "lodging facility" means a hotel, motel or motor
9 hotel, a bed and breakfast facility, an inn, a resort or other
10 facility offering rooms for payment of rent or other
11 consideration;

12 E. "qualified municipality" means an incorporated
13 municipality that has a population of more than seventy
14 thousand but less than one hundred thousand according to the
15 2000 federal decennial census located in a class A county;

16 F. "room" means a unit of a lodging facility, such
17 as a hotel room;

18 G. "vendee" means a person who rents or pays
19 consideration to a vendor for use of a room; and

20 H. "vendor" means a person or his agent who
21 furnishes rooms for occupancy for consideration.

22 Section 3. AUTHORIZED LOCAL GOVERNMENTAL ENTITIES. -- The
23 following local governmental entities are authorized to impose
24 convention center fees:

25 A. a qualified municipality if the governing body

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1 of the qualified municipality has enacted an ordinance to
2 impose a convention center fee;

3 B. a county in which a qualified municipality is
4 located, provided that:

5 (1) a qualified municipality within the county
6 has enacted an ordinance to impose a convention center fee;

7 (2) the board of county commissioners of the
8 county has enacted an ordinance to impose a convention center
9 fee;

10 (3) the qualified municipality and the county
11 have entered into a joint powers agreement pursuant to the
12 Joint Powers Agreements Act to collect the revenue from the
13 convention center fee and to expend the revenue as required in
14 the Convention Center Financing Act; and

15 (4) the fee shall only apply to lodging
16 facilities located within twenty miles of the corporate limits
17 of the qualified municipality; and

18 C. an additional municipality located within twenty
19 miles of the corporate limits of a qualified municipality in
20 the same county in which that qualified municipality is
21 located, provided that:

22 (1) the qualified municipality has enacted an
23 ordinance imposing a convention center fee;

24 (2) the additional municipality has enacted an
25 ordinance imposing a convention center fee; and

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1 (3) the qualified municipality and the
2 additional municipality have entered into a joint powers
3 agreement pursuant to the Joint Powers Agreements Act to
4 collect the revenue from the convention center fee and to
5 expend the revenue as required by the Convention Center
6 Financing Act.

7 Section 4. IMPOSITION OF CONVENTION CENTER FEE--USE OF
8 PROCEEDS. --

9 A. A local governmental entity may impose by
10 ordinance a fee on the use of a room within a lodging facility
11 within the local governmental entity. The fee may be referred
12 to as the "convention center fee". The amount of the
13 convention center fee shall not exceed two dollars fifty cents
14 (\$2.50) per room for each day the room is occupied by a vendee.

15 B. A convention center fee imposed pursuant to this
16 section shall be reviewed by the governing body of the local
17 governmental entity annually. The local governmental entity
18 shall adjust the amount of the convention center fee by
19 ordinance to result in an amount of revenue equivalent to the
20 following percentage of the actual operating and maintenance
21 costs for the preceding fiscal year of the convention center to
22 which the revenue from the fee is dedicated pursuant to
23 Subsection E of this section:

24 (1) through fiscal year 2025, one hundred
25 twenty percent;

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1 (2) for fiscal year 2026, one hundred percent;
2 and

3 (3) for fiscal year 2027 and subsequent fiscal
4 years, a percentage that is two percent less than the prior
5 fiscal year.

6 C. If convention center fees imposed are subject to
7 the provisions of a joint powers agreement between two local
8 governmental entities, the local governmental entities that are
9 parties to the joint powers agreement shall jointly determine
10 changes in the rate of convention center fees to be imposed.

11 D. A qualified municipality shall not decrease the
12 convention center fee while revenue bonds to which the revenue
13 of the convention center fees is pledged remain outstanding.

14 E. A local governmental entity shall dedicate the
15 revenue from the convention center fee as provided in this
16 subsection at the time that the ordinance imposing the fee is
17 enacted. A local governmental entity that is a party to a
18 joint powers agreement regarding the imposition of a convention
19 center fee shall enact an ordinance that includes the
20 provisions stated in the joint powers agreement and limit the
21 use of the revenue to the following:

22 (1) costs of acquisition of land for and the
23 design, construction, equipping, furnishing, landscaping,
24 operation and maintenance of a convention center located within
25 the qualified municipality;

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1 (2) payments of principal, interest or prior
2 redemption premiums due in connection with and any other
3 charges pertaining to revenue bonds authorized by the
4 Convention Center Financing Act; and

5 (3) costs of collecting and otherwise
6 administering the convention center fee; provided that
7 administration costs shall not be paid until all required
8 payments on the revenue bonds issued pursuant to the Convention
9 Center Financing Act are made and that no more than ten percent
10 of the revenue collected in any fiscal year shall be used to
11 pay administration costs.

12 Section 5. EXEMPTIONS. -- The convention center fee shall
13 not apply:

14 A. if a vendee:

15 (1) has been a permanent resident of the
16 lodging facility for a period of at least thirty consecutive
17 days; or

18 (2) enters into or has entered into a written
19 agreement for a room at a lodging facility for a period of at
20 least thirty consecutive days;

21 B. if the consideration paid by a vendee is less
22 than two dollars (\$2.00) a day;

23 C. to rooms at institutions of the federal
24 government, the state or any political subdivision thereof;

25 D. to rooms at religious, charitable, educational

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1 or philanthropic institutions, including rooms at summer camps
2 operated by such institutions;

3 E. to clinics, hospitals or other medical
4 facilities;

5 F. to privately owned and operated convalescent
6 homes or homes for the aged, infirm, indigent or chronically
7 ill; or

8 G. if the vendor does not offer at least three
9 rooms at its lodging facility. The convention center fee shall
10 be imposed on the lodging facilities of a vendor that owns
11 three or more lodging facilities within local governmental
12 entities that have imposed a convention center fee, regardless
13 of the number of rooms available for occupancy.

14 Section 6. COLLECTION OF CONVENTION CENTER FEE. --

15 A. A vendor providing rooms in a local governmental
16 entity that has imposed a convention center fee shall collect
17 the proceeds on behalf of the local governmental entity and
18 shall act as a trustee for the fees collected.

19 B. The convention center fee shall be collected
20 from vendees in accordance with the ordinance imposing the
21 convention center fee and shall be accounted for separately
22 from the rent fixed by the vendor for rooms.

23 Section 7. AUDIT OF VENDORS. --A local governmental entity
24 assessing a convention center fee shall include verification of
25 the collection of the correct convention center fee in any

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1 audit of a vendor conducted pursuant to Section 3-38-17.1 NMSA
2 1978.

3 Section 8. FINANCIAL REPORTING. -- The chief executive
4 officer of a local governmental entity assessing a convention
5 center fee shall report to the local government division of the
6 department of finance and administration on a quarterly basis
7 any expenditure of convention center fee funds.

8 Section 9. ENFORCEMENT. --

9 A. An action to enforce the Convention Center
10 Financing Act may be brought by:

11 (1) the attorney general or the district
12 attorney in the county of jurisdiction; or

13 (2) a vendor who is collecting the proceeds of
14 a convention center fee in the county of jurisdiction.

15 B. A district court may issue a writ of mandamus or
16 order an injunction or other appropriate remedy to enforce the
17 provisions of the Convention Center Financing Act.

18 C. The court shall award costs and reasonable
19 attorney fees to the prevailing party in a court action to
20 enforce the provisions of the Convention Center Financing Act.

21 Section 10. COLLECTION OF DELINQUENCIES. --

22 A. A local governmental entity shall by ordinance
23 provide that a vendor is liable for the payment of the proceeds
24 of convention center fees that the vendor failed to remit to
25 the local governmental entity. Failure of the vendor to

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1 collect the fee is not cause for the local governmental entity
2 to forgive convention center fees due and owed by the vendor.
3 The ordinance shall provide for a civil penalty for each
4 occurrence of failure to remit convention center fees in an
5 amount equal to the greater of ten percent of the amount that
6 was not duly remitted to the local governmental entity or one
7 hundred dollars (\$100).

8 B. The local governmental entity may bring an
9 action in the district court of the judicial district in which
10 the local governmental entity is located for collection of
11 amounts due, including without limitation, penalties on the
12 amounts due on the unpaid principal at a rate not exceeding one
13 percent per month, the costs of collection and reasonable
14 attorney fees incurred in connection with the court action to
15 collect the unpaid convention center fees.

16 Section 11. LIEN FOR CONVENTION CENTER FEE--PAYMENT--
17 CERTIFICATE OF LIEN.--

18 A. The convention center fee assessed by a local
19 governmental entity constitutes a lien in favor of that local
20 governmental entity upon the personal and real property of the
21 vendor providing lodging facilities in that local governmental
22 entity. The lien may be enforced as provided in Sections
23 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be
24 determined from the date of filing.

25 B. Under process or order of court, a person shall

1 not sell the property of a vendor without first ascertaining
2 from the clerk or treasurer of the local governmental entity in
3 which the vendor is located the amount of any convention center
4 fees due. Convention center fees due the local governmental
5 entity shall be paid from the proceeds of the sale before
6 payment is made to the judgment creditor or any other person
7 with a claim on the sale proceeds.

8 C. The clerk or treasurer of the local governmental
9 entity shall furnish a certificate of lien to a person applying
10 for a certificate showing the amount of all liens in the
11 records of the local governmental entity against any vendor
12 pursuant to the Convention Center Financing Act.

13 Section 12. ORDINANCE REQUIREMENTS. --The ordinance
14 imposing a convention center fee or any ordinance amending the
15 imposition of a convention center fee shall:

16 A. state:

17 (1) the rate of the convention center fee to
18 be imposed;

19 (2) the times, place and method for the
20 payment of the convention center fee proceeds to the local
21 governmental entity;

22 (3) the accounts and other records to be
23 maintained in connection with the convention center fee;

24 (4) a procedure for making refunds and
25 resolving disputes relating to the convention center fee;

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1 (5) the procedure for preservation and
2 destruction of records and for their inspection and
3 investigation;

4 (6) vendor audit requirements;

5 (7) applicable civil and criminal penalties;

6 and

7 (8) a procedure of liens, distraint and sales
8 to satisfy those liens; and

9 B. provide other rights, privileges, powers,
10 immunities and other details relating to the collection of the
11 convention center fee and the remittance of the proceeds
12 thereof to the local governmental entity.

13 Section 13. REVENUE BONDS. --

14 A. Revenue bonds may be issued at any time by a
15 qualified municipality that has imposed a convention center fee
16 to defray wholly or in part the costs authorized in Paragraph
17 (1) of Subsection E of Section 4 of the Convention Center
18 Financing Act. The revenue bonds may be payable from and
19 payment may be secured by a pledge of and lien on the revenue
20 derived from:

21 (1) the proceeds of the convention center fee
22 of the qualified municipality and the proceeds of the
23 convention center fee of a local governmental entity that has
24 entered into a joint powers agreement with the qualified
25 municipality to impose a convention center fee, the proceeds of

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1 which shall be dedicated to the payment of revenue bonds for a
2 convention center in the qualified municipality;

3 (2) a convention center to which the bonds
4 pertain, after provision is made for the payment of the
5 operation and maintenance expenses of the convention center;

6 (3) that portion of the proceeds of the
7 occupancy tax of the qualified municipality available for
8 payment of revenue bonds pursuant to Paragraph (1) of
9 Subsection B of Section 3-38-23 NMSA 1978;

10 (4) any other legal available revenues of the
11 qualified municipality; or

12 (5) a combination of revenues from the sources
13 designated in Paragraphs (1) through (4) of this subsection.

14 B. The bonds shall bear interest at a rate or rates
15 as authorized in the Public Securities Act, and the first
16 interest payment may be for any period authorized in the Public
17 Securities Act.

18 C. Except as otherwise provided in the Convention
19 Center Financing Act, revenue bonds authorized in that act
20 shall be issued in accordance with the provisions of Sections
21 3-31-2 through 3-31-6 NMSA 1978.

22 Section 14. REFUNDING BONDS. --

23 A. A qualified municipality having issued revenue
24 bonds as authorized in the Convention Center Financing Act may
25 issue refunding revenue bonds payable from pledged revenues

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1 authorized for the payment of revenue bonds at the time of the
2 refunding or at the time of the issuance of the bonds being
3 refunded as the governing body of the qualified municipality
4 may determine, notwithstanding that the revenue sources or the
5 pledge of such revenues or both are thereby modified.

6 B. Refunding bonds may be issued for the purpose of
7 refinancing, paying and discharging all or a part of
8 outstanding bonds of any one or more outstanding bond issues:

9 (1) for the acceleration, deceleration or
10 other modification of the payment of the obligations, including
11 any capitalization of any interest in arrears or about to
12 become due for any period not exceeding one year from the date
13 of the refunding bonds;

14 (2) for the purpose of reducing interest costs
15 or effecting other economies;

16 (3) for the purpose of modifying or
17 eliminating restrictive contractual limitations pertaining to
18 the issuance of additional bonds or otherwise concerning the
19 outstanding bonds; or

20 (4) for any combination of the purposes
21 specified in Paragraphs (1) through (3) of this subsection.

22 C. The interest on a bond refunded shall not be
23 increased to a rate in excess of the rate authorized in the
24 Public Securities Act and shall be paid as authorized in that
25 act.

